

for The Defense



Volume 9, Issue 2 ~ ~ February 1999

The Training Newsletter for the Maricopa County Public Defender's Office ~ Dean Trebesch, Maricopa County Public Defender

CONTENTS:

Reaching the Jury: The Case for Multi-Modal Jury Presentation	Page 1
Overview of Meth Use and Production	Page 5
Ordinary Extraordinary Circumstances: Continuances in All-Too-Common Situations	Page 6
Subpoenaing Out-of-State Witnesses	Page 8
Arizona Advance Reports	Page 10
Bulletin Board	Page 10
January Jury Trials	Page 11

REACHING THE JURY: The Case for Multi-Modal Jury Presentation

By Neal C. Taylor
Deputy Legal Defender and
Patti Taylor, School Psychologist
Chandler Unified School District

Introduction

Have you ever had this (or some variation) happen to you? The jury can't reach a verdict. The court declares a mistrial. Afterwards, you talk to several of the jury members. Juror A tells you, "there were two of us who wanted to go your way. But, that one piece of testimony that we thought was important, no one else heard."

You reviewed your notes -- of course that testimony came in! The witness did *speak* the critical words. It was early in the trial. What was wrong with those people? How could so many of them miss that crucial testimony?

Question: Why is it that only some of the people hear it all? For us, as trial attorneys, the more important question is: What can we do to make sure that the entire jury "hears" the crucial testimony and argument?

The answer to these questions lies in understanding *learning patterns*. *Learning patterns* describe the various ways that a person, (1) receives or gathers information, (2) internally sorts that information, and (3) integrates the information.

The science and research that underlie learning patterns/learning styles is both voluminous and well documented.¹ For the purpose of this article, it is a given. Nevertheless, a basic understanding of the mechanics of learning patterns is necessary. That basic understanding will aid in comprehending why different people learn through different modalities. Secondly, awareness of learning patterns will encourage us to use various communication modalities to reach those individuals we might otherwise lose.

As trial attorneys, we need to be aware that people have different *learning patterns*. This knowledge enables us to ensure that all of the members of our audience (the jury) receive and process all of the relevant information.

Learning Patterns

Research indicates that people process information (receive, sort and integrate) through three sensory modalities. Those modalities are visual (V), auditory (A) and kinesthetic (K).²

The patterns describe the optimal learning sequence for a person. In other words, every person would have a particular pattern that would naturally facilitate his or her learning. However, this does not mean that the categories are mutually exclusive. For example, a KAV best *receives information kinesthetically*. However, that person may also *receive information auditorially or visually*. The problem is, the other channels (auditory or visual) are not as clear and complete as the kinesthetic channel.³

Brian Waves and Learning Modalities

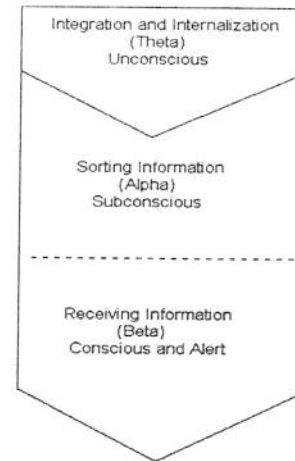
By using an electroencephalograph, one can monitor the brain's activity. Brain activity (or waves) is divided into a number of patterns. For the purpose of this article, we will be focusing on Beta, Alpha, and Theta waves. Each of these wave patterns corresponds to the three learning stages (receiving, sorting, and integrating).

Beta waves are seen when a person is in an alert, receptive, and conscious state.

Alpha waves are seen when a person is sorting information. Alpha waves are generally present when a person is sorting information in a generally subconscious manner.

Theta waves are seen when a person is integrating information. This is generally done in an unconscious manner.

These three wave patterns follow the learning sequences. For example, an AVK would best receive information (Beta) through the *auditory* channel. She would best sort the material (Alpha) through the *visual* channel. The diagram below represents general learning sequence and the corresponding brain wave.



Let's assume this same AVK person is on your jury. In your trial, identity is the issue. Merely hearing the specific discrepancies would be insufficient. Granted, she may hear them (discrepancies), but unless they are integrated, the significance would be lost. *Showing* the discrepancies on a chart, would access her visual channel. This facilitates her sorting of the information. However, to gain the best integration with the AVK, she needs to utilize the kinesthetic channel.

One of the easiest ways to accomplish this, is to write the discrepancies yourself on an easel or chart as you speak. This will encourage the juror to take written notes and thus involve her kinesthetic channel. This would result in a full integration of the information.

The six basic learning patterns are listed below. Each pattern is denominated by the sequence of the pattern. For example, a KAV would optimally receive information kinesthetically; best sort the information auditorially; and optimally integrate the information visually.

There are six basic patterns of processing information through the three sensory modalities. The six basic processing patterns are:

for The Defense Copyright©1999

Editor: Russ Born

Assistant Editors: Jim Haas
Lisa Kula

Office: 11 West Jefferson, Suite 5
Phoenix, Arizona 85003
(602) 506-8200

for The Defense is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. *for The Defense* is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 5th of each month.

AVK - Optimally receives information auditorially; optimally sorts visually; and optimally integrates kinesthetically.

AKV - Optimally receives information auditorially; optimally sorts kinesthetically; and optimally integrates visually.

VAK - Optimally receives information visually; optimally sorts auditorially; and optimally integrates kinesthetically.

VKA - Optimally receives information visually; optimally sorts kinesthetically; and optimally integrates auditorially.

KAV - Optimally receives information kinesthetically; optimally sorts auditorially; and optimally integrates visually.

KVA - Optimally receives information kinesthetically; optimally sorts visually; and optimally integrates auditorially.

Six Learning Patterns

	Primary Modality for Receiving Data	Primary Modality for Sorting data	Primary Modality for Integrating Data	Present Information to Them	Learns Best By
<i>Primary Brian Wave Pattern</i>	<i>Beta Conscious Alert</i>	<i>Alpha Subconscious</i>	<i>Theta Unconscious</i>		
Learning Pattern AVK	Auditory	Visual	Kinesthetic	Verbally and Visually	Have to talk to understand
AKV	Auditory	Kinesthetic	Visual	Verbally and Kinesthetically	Teaching Others
VAK	Visual	Auditory	Kinesthetic	Visually and Verbally	Reading
VKA	Visual	Kinesthetic	Auditory	Visually and Kinesthetically	Doing what they are shown and asking endless questions
KAV	Kinesthetic	Auditory	Visual	Kinesthetically and Visually	Moving their bodies (take in visual information at a glance)
KVA	Kinesthetic	Visual	Auditory	Kinesthetically and Visually	In solitude (can be overwhelmed by listening)

*Kinesthetically (experientially) presented modality may consist of the learner taking notes, being handed evidence or simply doing a repetitive body movement that may appear to be play or fidgeting. Play may be constant manipulation of an item such as a paper clip or piece of lint.

Application to the Real World

What's the bottom line? How can I use this information to communicate more effectively with the jury? *Bottom Line Answer:* Use all three modalities as often as possible, especially with critical facts or arguments.

We trial attorneys love to talk. As a group, we enjoy using the auditory channel. The reality is - - you will have all different types of learners on the jury. So - - we must try to involve more of the other learning modalities.

Employing more use of the visual channel is fairly easy. However, involving the kinesthetic channel can be a challenge. It requires creativity and spontaneity. The key to involving the kinesthetic channel is allowing the person to use their body in some manner. Encourage note taking, especially of important points. Pictures of important items should not just be shown on the Elmo. Publish (hand) the pictures to the jury, so that individual members can touch and manipulate them. Be inventive!

Implications and Suggestions from a School Psychologist

AVK's are sensitive to verbal tones. They learn most easily with metaphors and visual aids.

AKV's need clear straightforward explanations spoken with rhythm. It helps to begin with "I'd like to tell you . . ."

VAK's need direct eye contact and a minimum of visual clutter. They learn most easily from visual aids combined with oral presentations.

VKA's need visual clarity to think (no visual clutter). They most easily remember what they see or read. They learn by taking copious notes and writing the same things repeatedly. They need eye contact. They learn easily if the presenter draws or writes keywords/lists as they make oral explanations/presentations. As these learners are very literal in the auditory channel, sarcasm should be avoided. Long oral presentations will cause them to "space out" in Theta brain wave patterns and they will miss the presentation.

KAV's remember what they have physically handled or manipulated. They are very aware of the environment. Note taking, moving and fidgeting helps

for The Defense

them remain alert and attentive. It helps to explain things in terms of how something was done or how it might have felt. They take in visual information at a glance and are quickly overwhelmed with visual input.

KVA's learn by taking notes, seeing visuals and hearing words relative to feeling (i.e., grab, hard, anxious, in touch). They are very sensitive to voice tone and are easily overwhelmed with verbal information.

Multi Modal Presentation: Do's

- ◆ Make well organized prepared visual aids with little clutter and generous white space;
- ◆ For important points, write key words as you talk (this encourages note taking);
 - ◆ Attempt eye contact with each juror;
 - ◆ Use simple straightforward sentences;
 - ◆ Speak with rhythm and use metaphors;
 - ◆ Encourage note taking;
- ◆ Explain in terms of how things were done or might have felt;
- ◆ Allow jurors to handle evidence whenever possible;
- ◆ Be encouraged when people fidget/squirm (they are active, alert attenders);
- ◆ Be encouraged when jurors avoid eye contact (some people are distracted by the visual stimulus of eye contact).

Conclusion

As noted above, the six different learning patterns prefer six different sequences. Obviously, a lawyer cannot present each significant fact eighteen different times. Nevertheless, we do have at least three opportunities (opening, taking of evidence, closing) to present the crucial facts. This provides us with the opportunity to use the three different modalities in an assortment of ways. Our suggestion is - - be creative, be inventive. The more variety that you employ, the better will be your communication with your audience. ■

1. Markova, D. (1996), *The Open Mind, Discovering the Six Patterns of Natural Intelligence*, Berkley, CA: Conari Press; Dunn, Rl, and Dunn, K. (1986), *Teaching Students Through Their Individual Learning Styles: A Practical Approach*, Englewood Cliffs, NJ; Prentice Hall; *Annotated Bibliography On Learning Styles* (1991), Jamaica, NY: St. John's University, Center for the Study of Learning and Teaching Styles.
2. Markova, *supra.*; Markova, D. and Powell, A., *How Your Child is Smart* (1992), Berkely, CA; Conari Press.
3. *Id.*
4. Markova, *The Open Mind, supra.* 16-32.

OVERVIEW OF METH USE AND PRODUCTION

By Ted J. Crews
Deputy Public Defender - Group D

As criminal defense lawyers we see the ravages of methamphetamine use. We also see and represent those who are charged with manufacturing meth in hotel rooms and garages, or selling it on the street corners. I originally started researching meth on the Internet to try to educate myself for preliminary hearings involving possession of chemicals for manufacture of meth. What I found was a great number of sites dedicated to education regarding the ill-effects of meth use on the body and on society as a whole, but only a handful of sites that had information useful to the defense attorney. My intent to educate myself about the chemistry behind meth is an ongoing process. The information related in this article was culled from two National Drug Intelligence Center articles taken from the Department of Justice website.

Methamphetamine alters brain chemistry by inducing an excess of the neurotransmitter dopamine. Dopamine is associated with feelings of pleasure and elation, and may be the master molecule of addiction. Methamphetamine was first synthesized in 1887 from the drug ephedrine, which had been used as medicine in China for centuries. In 1932 it was first sold in the United States as a nasal spray for treatment of nasal passage inflammation, and later in tablet form for treatment of narcolepsy. The first epidemic of meth abuse didn't occur until it was used during the 30's and 40's by the Allied and Axis troops during the war. The second epidemic of widespread use occurred in the 60's. It wasn't until the late 80's that a smokable form of meth was developed. This new ability ushered in another wave of abuse beginning in Japan and Korea and ending up in the United States.¹

There are three types of methamphetamine: dextro-methamphetamine (d-meth), dextro-levo methamphetamine (dl-meth) and levo-methamphetamine (l-meth). D-meth is the most potent and widely abused form of methamphetamine in the United States today.²

D-meth is a potent central nervous stimulant with physical and psychological effects very similar to cocaine, and is known by a variety of street names, including "speed," "crank," "ice," and "meth." D-meth emerged in the 1980's from a clandestine manufacturing method using the precursor chemical ephedrine/pseudoephedrine reduction process.

Production of meth results in large amounts of toxic waste. Some methods produce six pounds of highly toxic waste for each pound of meth produced. These materials are either being dumped illegally into our sewers, dumps or deserts, or they are simply left behind for officials to clean up once the production site has been discovered. Interestingly, there is a cottage industry emerging relating to the dumping of such wastes. Individuals who undertake the disposal of such hazardous wastes have been dubbed "oil barons." To give you some idea of just how hazardous this waste is, the EPA has estimated that red phosphorous will remain flammable for over 40 years even when it has been buried.

According to the NDIC article entitled "Hazards of D-Meth Production" the manufacture of meth typically takes place in three stages. The first stage is the cooking stage, which consists of the initial mixing and heating of ephedrine, hydriodic acid and red phosphorous which

forms d-meth in an acidic mixture. After mixing, the batch is strained through a bed sheet or pillow case to remove the red phosphorous. The by-products of this process stage are materials contaminated with red phosphorous and hydriodic acid. The next stage is the extraction stage. The first part of the extraction stage

converts the mixture to a base by adding sodium hydroxide (lye or caustic soda). Ice is then added to cool the mixture to prevent evaporation since the chemical process creates high temperatures. After this is complete the mixture is poured into a container such as a drum with a spigot at the base of it. Next the meth is extracted from the mixture by using either Freon or such chemicals as Coleman fuel or other solvents. These additives cause the meth in the mixture to settle to the bottom making it possible to remove the meth compound through a drain, while leaving the resulting sodium hydroxide waste within the container. The final stage is the "salting" or drying stage. This stage involves treating the mixture with hydrogen chloride gas to convert the d-meth oil into a

(cont. on pg. 6)

"What I found was a great number of sites dedicated to education regarding the ill-effects of meth use on the body and on society as a whole, but only a handful of sites that had information useful to the defense attorney."

white crystalline powder. Presses or mop buckets are then used to remove the excess Freon.³ Knowing the intricacies of such processes may allow a defense lawyer to “school” an “expert” narcotics officer who is rattling off a list of chemicals found at the scene without having even the most basic understanding of how such chemicals could be used in the production process.

There is a wealth of information on treatment for, and on the effects of, methamphetamine use on the Internet. I found the following sites to be particularly helpful in researching methamphetamine use and production:

<http://www.antimeth.com> (use the links to learn more)

<http://www.usdoj.gov/ndic/publications.htm> (all of the listed articles are helpful)

Most helpful were the articles from the Department of Justice website titled “Hazards of D-Methamphetamine Production” and “Effects of D-Methamphetamine.” The most unique website was titled “Crank Cooks for Christ.” This site’s creator had started his cause in the hopes of gaining religious freedom to cook methamphetamine. One can only imagine the number of days he was awake in a row before such brilliance struck. ■

1. “Meth, A Growing Problem,” Materials presented by: Alex Mahon, Col, AZ ANG, Counterdrug Coordinator, Arizona National Guard Joint Counter Narcotics Task Force (JCNTF) and Director, Methamphetamine Control Strategy, Office of the Governor.

2. NDIC National Drug Intelligence Center, “Effects of D-Methamphetamine, Mexico Unit, December 1996” 96-C0109-003, United States Department of Justice.

3. NDIC National Drug Intelligence Center, “Hazards of D-Methamphetamine Production, June 1995” United State Department of Justice.



ORDINARY EXTRAORDINARY CIRCUMSTANCES: Continuances in All-too-Common Situations

By Jim Haas
Senior Deputy

Rule 8.5(b) provides that: “A continuance of any trial date shall be granted *only* upon a showing that *extraordinary* circumstances exist *and* that delay is indispensable to the interests of justice.” (Italics added.) But continuances are sought, and granted, every day, based on circumstances that are so ordinary that they may be fairly described as routine. Examples are: court calendar congestion, scheduling conflicts, late discovery, unavailable witnesses, and inability to complete interviews or to do other trial preparation. All good reasons to continue, but hardly extraordinary. Despite a defendant’s objection and insistence on proceeding continuances are even granted on the last day of Rule 8. Can the court do that? A recent Court of Appeals case clarifies some of the issues residing in the rather nebulous world of continuances.

Continuances Over Client Objection

Despite your best efforts, you are not ready for trial, and need a continuance. You talk to the prosecutor, who indicates that she will not object (which is code for “I’m not ready, either.”) The judge is in another trial, and case transfer is jammed, so you expect that the judge will agree to continue.

All is well, until you talk to your client. Sensing that some advantage may be gained if “the system” cannot produce his trial exactly as scheduled, your client utters the dreaded phrase, “I’m not waiving any time!”

Now what? Some judges in this situation feel that they have no choice but to ship the case to case transfer with a “last day” red flag. Others will “waive” the client’s rights, and continue the trial over the client’s objection, finding extraordinary circumstances in this very ordinary situation. This “waiver without a waiver”

(cont. on pg. 7) ☞

seems to leave everyone with a nagging feeling that something unconstitutional has been done.

May the court continue a trial, and “waive” time, over the defendant’s objection? A recent case says yes, but only under certain circumstances.

In *State v. Clark*, 1999 WL 16739 (January 19, 1999), Division 1 of the Arizona Court of Appeals affirmed the trial court’s decision granting a continuance in spite of the defendant’s demand for an immediate trial. Just before trial in Mr. Clark’s attempted murder case, the defense attorney and the prosecutor jointly requested a continuance to enable them to more effectively prepare their cases. The court asked Mr. Clark if he would waive time, but Mr. Clark refused. He insisted on an immediate trial and different counsel, if necessary. Mr. Clark even offered to represent himself, if that would enable him to proceed immediately to trial. The trial court weighed the defendant’s right to speedy trial against his right to adequate representation of counsel, and found that “representation by counsel is more important in this case than trying the case precipitously, either with or without counsel.” The trial court found that the continuance was justified by extraordinary circumstances, and that it was in the interest of justice. Mr. Clark was eventually convicted, and on appeal, argued that his right to a speedy trial had been violated.

The Court of Appeals cited *State v. (Joe U.) Smith*, in which the Court found that “(w)hen defense counsel states that he is not adequately or fully prepared on the eve of trial, where the lack of preparation is not due to an absence of diligence on his part, a trial judge does not err in continuing the matter.” 146 Ariz. 325, 326-27, 705 P.2d 1376, 1377-78 (App. 1985). The Court in *Clark* found that “(t)his result does not change even if the defendant insists on an immediate trial.”

On the basis of *Smith*, the Court of Appeals held that “we will affirm a trial court’s decision granting a continuance, despite a defendant’s insistence on an immediate trial, when the facts indicate that defense counsel needs more time to prepare and no evidence exists of a lack of diligence by counsel.”

Continuances Because of a Prosecutor’s Scheduling Conflict

Another ordinary circumstance that is found extraordinary enough to warrant a continuance is when the prosecutor is in another trial. Although it was not germane to the case, the Court in *Clark* indicated, in a footnote, that a trial court may find that a prosecutor’s scheduling conflict constitutes extraordinary circumstances justifying the continuance of a trial, citing *State v. Mendoza*, 170 Ariz. 184, 823 P.2d 51 (1992).

You may remember *Mendoza* as the case that overruled *Hinson v. Coulter*, the case that we used to get numerous DUI cases dismissed for violation of the right to speedy trial. But another issue in *Mendoza* was whether the trial court violated Rule 8 when it granted the prosecution’s motion for a 28-day continuance because the prosecutor was trying another case. The trial court continued the case over the defendant’s objection.

The Court of Appeals reversed, finding a violation of *Hinson*. The Supreme Court, having overruled *Hinson*, then considered whether the granting of the continuance because of the prosecutor’s scheduling conflict violated the speedy trial limits of Rule 8.

The Court cited several cases in which it had ruled that the trial court’s exercise of discretion on a motion for continuance under Rule 8 will not be disturbed unless there is a clear abuse of discretion *and prejudice results*. The Court found no abuse of discretion and no prejudice to the defendant because of the 28-day continuance. On the issue of prejudice, the Court noted that the defendant’s attorney had asked for, and was granted, two continuances *after* the disputed continuance requested by the prosecutor.

The Court held that, under the particular circumstances of the case, the trial court did not abuse its discretion in finding that the prosecutor’s scheduling conflict was an extraordinary circumstance meriting a continuance. But the Court declined to rule that a prosecutor’s scheduling conflict is always an extraordinary circumstance justifying an exclusion of time under Rule 8.5(b). Whether the exclusion of time from Rule 8 calculations is an abuse of discretion depends upon the facts of each particular case.

(cont. on pg. 8) ☛

“The Court cited several cases in which it had ruled that the trial court’s exercise of discretion on a motion for continuance under Rule 8 will not be disturbed unless there is a clear abuse of discretion *and prejudice results*.”

The Bottom Line

The key issue in the situation where you need a continuance to prepare, but your client refuses to waive time, is whether you have been *duly diligent* in your efforts to prepare. The key issue in the situation where a judge wants to continue a trial, over your objection, because the prosecutor is in another trial, is whether you can show *prejudice*. Curiously missing from the equation is the requirement of Rule 8.5(b) that the circumstances justifying a continuance be extraordinary. ■

SUBPOENAING OUT-OF-STATE-WITNESSES

By Jeff Fisher and Paul Ramos
Trial Group C

During your career as a criminal defense attorney, you may encounter a case that requires the attendance of out-of-state witnesses. If you do, you will want to review A.R.S. § 13-409I, et seq.

The process of securing the attendance of your out-of-state witness requires involvement of the Superior Court judge handling your case as well as a Superior Court judge in the county where your witness is located. Additionally, if you are a public defender or legal defender, you must get approval from your office for all travel expenses (air fare, hotel accommodations, etc.). Advance planning is the key to this time consuming process.

In a county office the first order of business is to get approval for the travel expenses of your witness. The second order of business is to learn the county in which your witness resides, since you will be dealing directly with the Superior Court located in that particular county. You should also contact a local public defender or contract counsel.

The cooperation of the local public defender or contract counsel is extremely important. It is through them that the necessary forms are presented to the foreign court and they will also help direct the service of process on your out-of-state witness. Be courteous; this is an

extra duty and a time consuming one. It is suggested that you speak to the supervisor of the office. Don't hesitate to mention that as a public defender, you have done this for other out-of-state public defender offices when a witness from Arizona was needed. Do not hesitate to mention that you would be happy to return the assistance should they ever have the need. Now you're ready to prepare the forms necessary to secure your out-of-state witness.

This process requires the preparation of up to seven forms. These are:

- 1) Application For Attendance of Out-of-State Witnesses and Declaration of Counsel in Support Thereof
- 2) Certificate of Requesting Judge
- 3) Petition for Order to Show Cause
- 4) Order to Show Cause
- 5) Summons Directing Witnesses to Appear and Testify
- 6) Waiver of Order to Show Cause Hearing; Agreement to Appear and Notice of Penalty
- 7) Certificate of Service of Process

In our office these forms can be found on the S drive under \paragl\otstsub or araza/guzik/outofsta.sub (downtown).

The first step is to get a copy of all the forms from your secretary and complete them. You will find this will take you and your secretary a few days respectively.

The second step is to submit forms 1 and 2 to the Superior Court judge handling your criminal case. If your application (form 1) is granted, the judge will sign and issue the certificate (form 2) under seal. By doing so your judge requests the out-of-state court

to issue a summons to compel the attendance of your out-of-state witness. In order for a certificate to issue, two initial requirements must be met:

- 1) The other state must have a reciprocal provision for "commanding persons within its borders to attend and testify in criminal prosecutions, or grand jury investigations commenced or about to commence in this state"¹, and
- 2) The desired witness must be material.²

(cont. on pg. 9) ■

Furthermore, the defendant has the burden of showing why the attendance of the out-of-state witness is necessary.³ Simply put, you must make a showing that the out-of-state witness would testify favorably in your client's behalf.⁴ Should you fail to adequately describe the proposed testimony of your witness and its materiality to issues in your case, you risk a denial of your application and the requested certificate.

The third step (forms 3-7) requires the assistance of the Public Defender's Office in the state and county where your witness is located. That public defender will get a case number assigned to your case, coordinate with the court for the date and time of an order to show cause hearing, and then serve your witness with service of process for the order to show cause hearing. As you might guess, getting a case number assigned, setting an order to show cause date with enough time to serve the witness, and serving the witness take considerable time. You should allow for at least 30 days for all this to take place from the date that your superior court judge signs and issues the certificate (form 2, step 2 above). To facilitate this process, after the certificate is issued, send all the forms to the out-of-state Public Defender's Office (with forms 3-7 completed as fully as possible) and on a regular basis check on its progress (case number assigned, order to show cause hearing set, witness served, orders by the out-of-state court that your witness appear in Maricopa County for your trial). Constant coordination is necessary because any delay will affect your ability to meet your firm trial setting in Maricopa County. Keep your superior court judge immediately apprized of any delay.

The process will be slightly simplified with a cooperative witness who is willing to waive the Order to Show Cause Hearing. The witness must sign form 6, the Waiver of Order to Show Cause Hearing; Agreement to Appear and Notice of Penalty, after he or she is shown the Order to Show Cause. The witness should then be served with the original Summons (Form 5). If the witness is not going to waive the O.S.C. Hearing, then only the Order to Show Cause form should be served. The witness will then appear at the O.S.C. Hearing and hopefully be ordered by the out-of-state court to appear at your trial.

Let the Public Defender's Office know what you expect from the witness. Remember it will be their process server/investigator serving the witness. If the witness does not waive the Order to Show Cause Hearing, then your representative from the Public Defender's Office should be at the hearing and then apprise you of the result.

Remember any delay in your trial will play havoc with travel arrangements (placing a burden on our support staff) and inconvenience the witness who takes time off from work and his family to come to Arizona. Manage and plan this process carefully.

"Remember any delay in your trial will play havoc with travel arrangements (placing a burden on our support staff) and inconvenience the witness who takes time off from work and his family to come to Arizona. Manage and plan this process carefully."

Practice tip: When you contact the Public Defender's Office in the county where your witness is, ask if they know which judge will handle the case and what insight they can give you - how long will it be to get a

case number assigned, how many weeks out will the court set the Order to Show Cause Hearing, who will serve the witness with process, etc. Please contact Paul Ramos, Jeff Fisher, or Bob Guzik when you have this issue and before you begin. We would be happy to share our experience with you. ■

1. Arizona's reciprocal provision is A.R.S. § 13-4092.

2. 122 Ariz. at 230.

3. *State v. Mance*, 7 Ariz. App. 269, 272, 438 P.2d 338, 341 (Ariz. App. (1968)).

4. 7 Ariz. App. At 271 (citing *Stte v. Smith*, 87 N.J. Super. 98, 208 A. 2d 171, 174 (1965)).



(cont. on pg. 10) 

ARIZONA ADVANCE REPORTS

By Steve Collins
Deputy Public Defender - Appeals

State v. Hoover, 258 Ariz. Adv. Rep. 8 (CA 1, 12/22/98)

The Court of Appeals held endangerment is not necessarily a lesser-included offense of drive-by shooting "because shots fired from a motor vehicle at an unoccupied or vacant structure need not necessarily endanger another person."

The trial judge refused to amend the reasonable doubt instruction set out in *State v. Portillo*. The Court of Appeals held it had no authority to overrule the Arizona Supreme Court's decision on this issue.

In re Alton D., 258 Ariz. Adv. Rep. 10 (12/24/98)

At the disposition hearing, the judge set a thirty-day deadline for all victims to submit claims for restitution. The Court of Appeals held this was proper but that the amount of restitution could be modified at any time while the juvenile is on probation. This case was distinguished from the "broad rule" in *In re Frank H.* ■

BULLETIN BOARD

New Attorneys

Marie Dichoso-Beavers returned to the office on February 5. She will be handling spot assignments on a part-time basis. Welcome back!

Attorney Moves/Changes

James Park leaves the office on February 26. He had been a member of Group B since 1995. He will assume a position as a Staff Bar Counsel with the State Bar

New Support Staff

Erin Dean, assumed a position as a Legal Secretary for SEF on February 1. She has previously worked as a secretary with a strong background in customer service.

Teresa Diaz, Legal Secretary, joined Group A on February 8. She holds a BA in Literature as well as a Legal Assistant degree.

Michael Kay will assume the position of Litigation Assistant on March 1. He has a Legal Assistant degree and has spent many years working in the legal field with the Air Force.

Christine Wight and Jennifer Smith joined Group C as Office Aides on January 21.

Support Staff Moves/Changes

Amy Bagdol will assume a special work assignment as Supervisor of the Records Division on February 22.. Mike Fusselman previously handled this duty. He will return to his role as the Lead Investigator for Group D.

Charlotte Burnside, Legal Secretary, left the office on February 22. She had been working in Group A since November of 1997.

Alan Corbett, Information Technology, left the office effective January 29.

Kiera Lebet left the office on February 8. She was a Legal Secretary for Group D.

Roberta Rodriguez, Legal Secretary, left the office on February 11. She had been a member of Group D.

Jodi Shuptrine, Office Aide for Group D, left the office on February 19.

Theresa Sullivan, Network Client Support Technician, left the office on February 4. ■



January 1998 Jury and Bench Trials

Group A

Dates: Start/Finish	Attorney Investigator Litigation Assistant	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/5-1/13	Parsons & Carr Jones	Galati	Sorrentino	CR 98-00344 Kidnapping/F3D Att. Sexual Assault/F3D 2 cts. Sexual Assault/F2D Agg. Assault/F3D Assault/M1	Kidnapping-Guilty Att. Sexual Assault-Guilty Sexual Assault-Amended to Att. Sexual Assault/F3D-Guilty Sexual Assault-Guilty of Lesser- Sexual Abuse/F5 Agg. Assault-Guilty Assault-Guilty	Jury
1/12-1/14	Howe	Arellano	Wendell	CR 98-06256 Theft/F3 with 2 or more allegable priors	Not Guilty	Jury
1/12-1/20	Davis & Rossi Garrison	Jarrett	Mroz	CR 97-11953 Sexual Abuse/F#DAC 6 cts. Child Molestation/F3DAC with a predicate prior	Mistrial	Jury
1/13-2/2	Kent & Lawson	Baca	Mitchell	CR 96-08825 2 cts. Sex Abuse/F3DCAC 4 cts. Molest/F2DCAC Sex Conduct with Minor/F2DCAC	Not Guilty-1 ct. Sex Abuse Hung on all other counts	Jury
1/19-1/20	Klepper	Akers	Devito	CR 98-07140 POM/F6 PODP/F6	Guilty	Jury
1/19-1/21	Ryan	Kaufman	Lawritson	CR98-13630 Agg. DUI/F6	Not Guilty	Jury
1/20-1/27	Passon Robinson	McVey	Johnson	CR 98-11692 4 cts. Agg. Assault Dang/F3	Ct. 1-Not Guilty Ct. 2-Not Guilty Ct. 3-Guilty of Lesser Included Disorderly Conduct Dangerous Ct. 4-Not Guilty	Jury
1/21	Wall	Barclay	Lorna	CR 98-01412 IIP/M1	Dismissed	Bench
1/28	Hernandez	Hilliard	Neugebauer	CR 97-07538 Agg. DUI with 1 prior	Guilty	Bench

(cont. on pg. 12) ☞

Group B

Dates: Start/Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR# and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/7-1/8	Kratter & Bublik	Hutt	Bustamonte	CR 98-07504 POND/ F4 PDP/ F6	Hung (NG-5, G-3)	Jury
1/8-1/13	Bond Brazinskas	Daughton	Robinson	CR 9805841 3 Cts. Agg. Assault/ F3D	Not Guilty Agg. Asslt. Guilty of 3 Counts lesser included Disorderly Conduct, Dangerous	Jury
1/14	Agan Kasieta	Schwartz	Poster	CR 98-07492 Aggravated DUI/ F6	Mistrial	Jury
1/20-1/22	Bond	Galati	Rehm	CR 98-00658 Ct. 1 Agg. DUI/ F4 Ct. 2 False Reporting/ M1 Cts. 3-6 Agg. Assault on Cops/ F6	Count 1 - Guilty of lesser included Driving on a Suspended License Count 2 - Guilty Counts 3, 4, 6 - Guilty Count 5 - Not Guilty	Jury
1/21-1/26	Roth King Linden	Gottsfeld	McBee	CR 98-12371 2 Cts. Agg. Assault/ F6	Ct. 1 - Not Guilty Ct. 2 - Hung (NG-4, G-4)	Jury
1/22-1/22	L. Brown	O'Toole	Worth	CR 98-05252 Ct. 1 Sale of Crack Cocaine/ F2	Guilty	Jury
1/26-1/27	Roth Linden	Hutt	Lemke	CR 97-05654 2 Cts. Agg. DUI/ F4	Guilty both counts	Jury

Group C

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/4/99	Moore Breen	Dougherty	Flader	CR 98-91957 Theft/ F3 PODP/ F6	Guilty - Both Counts	Bench
1/7/99 -1/14	Corbitt	Ishikawa	Brenneman	CR 98-91579 Dr. w/Lic. Susp/Revkd/ F3 G/T vehicle/ F1	Guilty - Both Counts	Jury
1/14	Shoemaker & Klopp-Bryant Breen	Dairman	Harris	CR/98-93349 2 Cts Forgery/ F4	Mistrial	Jury
1/25-1/27	Antonson Breen	Hall	McCauley	CR 98-94357 2 Cts Agg DUI/ F4	Guilty - Both Counts	Jury

(cont. on pg. 13)

1/25-1/29	Burkhart & Ramos	Jarrett	Holtry	CR 98-94650(A) 2 Cts Agg DUI/ F4 Resisting Arrest/ F6	Not Guilty of Agg DUI Guilty of 2 Counts Lesser Included Misdemeanor DUI Not Guilty Resisting Arrest	Jury
1/26-1/28	Murphy Thomas	Aceto	Aubuchon	CR 97-95554 Burglary/ F3 Interfere w/ Judicial Proceeding/ M1	Guilty - Both Counts	Jury

Group D

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/4-1/8	Billar	Katz	Maason	CR 98-01993 1 Ct. Theft /F3 1 Ct. Traffic-Stolen Prop. /F3 CR 95-07820 1 Ct. Probation Violation	Guilty	Jury
1/19-1/26	Force	Katz	Ireland	CR 98-11063 1 Ct. Agg. DUI /F4	Not Guilty	Jury
1/14-1/16	Zelms & Mussman Bradley	Hutt	Cotter	CR 98-12619 1 Ct. 2° Burglary/ F3	Dismissed	Jury
1/11-1/14	Stazzone	Reinstein	Gialketsis	CR 98-11986 1 Ct. Burglary/ C3 1 Ct. Theft/ C3 1 Ct. Theft/ TK-OBT-Cred., CD/ F5 - 2 priors	Guilty	Jury
1/26-1/27	Claussen	Wilkinson	Hammond	CR 98-14931 1 Ct. Theft-Tk-Obt-Cred CD/ F5	Guilty	Jury
1/14	Berko & Silva	Katz	Keyt	CR 97-04389B 2 Ct. Agg Assault/ F2D	Dismissed on the merits	Jury
1/6	Silva	Katz	Johnson	CR 98-12779 1 Ct. PODD/ F4 1 Ct. PODP w/ 2 priors/ F6	Dismissed with Prejudice	Jury
1/13	Schaffer	Akers	Armijo	CR 97-07057 1 Ct POND/Sale/ F2 1 Ct Miscndct Inv Wpns/ F2	Guilty	Bench
1/26-1/27	Wilson Bradley	Crum	Brame	TR 98-05563 CR 1 Ct Misd DUI	Hung Jury	Jury

(cont. on pg. 14)

DUI Unit

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/19-1/21	Potter	P. Reinstein	Lemke	CR98-02889 1 Ct. Agg DUI/ F4 1 Ct. Live Accident w/Damage/ M3	Not Guilty	Jury
1/27-1/29	Carrion	Kalish	Lawritson	CR96-03257 2 Cts. Agg DUI/ F4	Guilty	Jury
1/27-1/27	Timmer	Ellis	Cappellini	CR97-01823 1 Ct. Agg DUI/ F4	Dismissed w/o prejudice	Jury

Office of the Legal Defender

Dates: Start-Finish	Attorney Investigator <i>Litigation Assistant</i>	Judge	Prosecutor	CR # and Charge(s)	Result: w/ hung jury, # of votes for not guilty/guilty	Bench or Jury Trial
1/26-1/28	Evans Horrall	O'Toole	Ryan	CR 98-16799 Agg.Asslt./ F3D	Guilty	Jury
1/11-1/12	Lamb Horrall	Baca	Patchett	CR 98-03786 1 ct. PODD/ 1 ct. PODP/	Guilty	Jury
1/25-1/27	Lamb Pangburn	Akers	Hernandez	CR 98-07445 1 ct. PODDS/ 1 ct. POM/ 1 ct. PODP/ 1 ct. Mis.Inv. Weapon/	Guilty	Jury
1/5-1/19	Steinle & Phillips	Barker	Jorgensen	CR97-06871 1 ct. 1° Murder/ F1D	Guilty	Jury